

Matthew G. Silva, plaintiff
DOC #957176 WA-217
Washington State Penitentiary
1313 N 13th Ave
Walla Walla, WA 99362

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

MATTHEW G. SILVA,

Plaintiff,

v.

JEFFREY UTTECHT, Coyote Ridge Corr.
Center (CRCC) Superintendent; DAVID
BAILEY, CRCC Associate Superintendent;
DAVID SCANTLIN, CRCC Hearings Officer;
DARRELL SCILLEY, CRCC Counselor; GARY
FORD, CRCC Unit Supervisor; MICHAEL
McCOURTIE and JACKQUELINE FLUAITT,
CRCC Grievance Coordinators; TIM LANG,
DOUGLAS CARR and JOHN DITIMAN,
Assistant Attorneys General;

Defendants.

NO. 4:15-cv-05094-SMJ

FIRST AMENDED COMPLAINT

I. JURISDICTION, PARTIES AND VENUE

1.1 This Court has jurisdiction over this action pursuant to 42 USC §§
1331, 1343 and 1983, as well as 28 USC § 1367.

1.2 Plaintiff MATTHEW G. SILVA is a prisoner currently confined at the
Washington State Penitentiary (WSP) in Walla Walla, Washington. Mr. Silva is
a resident of Washington State and a United States citizen.

1.3 Defendant JEFFREY UTTECHT was the Coyote Ridge Corrections Center
(CRCC) Superintendent at all times material to this complaint. As such, he
was responsible for the policies, procedures and practices followed by his
subordinates at CRCC. Mr. Uttecht is sued in his official and individual
capacities, and under the doctrine of respondeat superior.

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1 1.4 Defendant DAVID BAILEY was the CRCC Associate Superintendent at all
2 times material to this complaint. As such, he was responsible for the
3 policies, procedures and practices followed by his subordinates at CRCC. Mr.
4 Bailey is sued in his official and individual capacities, and under the
5 doctrine of respondeat superior.

6 1.5 Defendant DAVID SCANTLIN was a CRCC infraction Hearings Officer at
7 all times material to this complaint. Mr. Scantlin is sued in this official
8 and individual capacities.

9 1.6 Defendant DARRELL SCILLEY was a CRCC counselor at all times material
10 to this complaint. As such, he was responsible for security classification,
11 placement and transfer decisions for inmates held in the Intensive Management
12 Unit (IMU). Mr. Scilley is sued in his official and individual capacities.

13 1.7 Defendant GARY FORD was a CRCC Custody Unit Supervisor (CUS) at all
14 times material to this complaint. As such, he was responsible for the
15 policies, practices and procedures of his subordinates at CRCC. Mr. Ford is
16 sued in his official and individual capacities.

17 1.8 Defendants MICHAEL McCOURTIE and JACKQUELINE FLUAITT were CRCC
18 Grievance Coordinators at all times material to this complaint. As such, they
19 were responsible for addressing and processing inmate grievances, including
20 but not limited to staff misconduct grievances. Mr. McCourtie and Ms. Fluaitt
21 are sued in their official and individual capacities.

22 1.9 Defendant TIM LANG was the Supervisor of the Criminal Justice
23 Division (CJD) of the Washington State Attorney General's Office (AGO) at all
24 times material to this complaint. As such, he was responsible for the
25 policies, practices and procedures of his subordinates at the AGO. Mr. Lang
26 is sued in his official and individual capacities.

1 1.10 Defendants DOUGLAS CARR and JOHN DITTMAN were Assistant Attorneys
2 General (AAGs) assigned to the CJD at all times material to this complaint.
3 Mr. Carr and Mr. Dittman are sued in their official and individual capacities.

4 1.11 Mr. Silva reserves the right to amend the complaint to name John and
5 Jane Doe defendants as they are identified during the discovery process.

6 1.12 The defendants, and each of them, acted under color of state law at
7 all times material to this complaint.

8 1.13 Venue is proper in this Court because the acts and omissions
9 complained of herein occurred in Franklin County, Washington, and because most
10 of the defendants are residents there.

11 II. OPERATIVE FACTS

12 2.1 Mr. Silva was held in DOC custody from 2005 to 2013. During that
13 time, he was active in numerous court cases that exposed and attempted to hold
14 accountable numerous Washington State employees for serious misconduct, civil
15 rights violations and even criminal behavior.

16 2.2 During the time Mr. Silva was incarcerated, the AGO and DOC
17 participated in a pattern and practice of harassing and retaliating against
18 prisoners who exercised their right to access the court. The said pattern and
19 practice was a known quantity to AGO and DOC employees, including each of the
20 defendants herein, and it was used a liability avoidance tactic.

21 2.3 The defendants and their co-conspirators employed a variety of
22 harassing and retaliatory tactics in the furtherance of the pattern and
23 practice described in paragraph 2.2, above, including but not limited to:
24 repeated cell searches; falsified, unnecessary or petty infractions; repeated
25 transfers from cell-to-cell, unit-to-unit, prison-to-prison and state-to-
26 state; seizure, withholding and refusal to ship prisoner legal materials
27 (including files, papers, typewriters and witness/attorney contact
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1 information) from one prison to the next; arbitrary, capricious and illegal
2 seizure, perusal, copying, withholding and theft of prisoner property,
3 including but not limited to legal materials; obstruction and harassment for
4 prisoners assisting other prisoners with legal matters; prohibition and
5 obstruction of prisoners documenting their claims by exchanging affidavits,
6 declarations and witness statements; denial of copying services for legal
7 papers to pursue court access; denial of basic hygiene items; and arbitrary,
8 capricious and unlawful deprivation of government benefits or privileges like
9 jobs, desirable cell-assignments, recreation and exercise, schooling and
10 training.

11 2.4 Defendants LANG, CARR and DITTMAN had a duty to obstruct AGO and DOC
12 employees who violated the law pursuant to Dunbar v. Board of Equalization,
13 140 Wash 433 (1926), RCW 43.01.020, RCW 43.10.020 and RCW 43.10.030(2).

14 2.5 In the furtherance of the conspiratorial liability avoidance strategy
15 described in paragraphs 2.2 and 2.3, above, the defendants and their co-
16 conspirators employed a variety of harassing and retaliatory tactics against
17 Mr. Silva, including but not limited to baseless infractions and sanctions, a
18 campaign of state/prison/unit/cell transfers, repeated segregation,
19 obstruction of court access, seizure and withholding of legal files, theft and
20 delay of legal mail, denial of government benefits, denial of services, denial
21 of access to the administrative grievance process, destruction of property
22 (including his typewriter), withholding of property and various other adverse
23 actions.

24 2.6 Between 2005 and 2013, the defendants and their co-conspirators
25 transferred, authorized and defended transferring Mr. Silva over ninety (90)
26 times from state-to-state, prison-to-prison, unit-to-unit and cell-to-cell.
27 One DOC staff person told Mr. Silva he was "on the circuit," which was DOC's
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1 unofficial code for the pattern of retaliatory transfers described above.
2 Another DOC staff person told Mr. Silva that "Headquarters knows who you are
3 and if you continue to challenge the [DOC], your time will continue to be as
4 difficult as possible."

5 2.7 Defendants UTTECHT, BAILEY, SCANTLIN, SCILLEY, FORD, McCOURTIE,
6 FLUAITT, LANG, CARR and DITIMAN were on notice that Mr. Silva was being
7 subjected to pattern retaliation and harassment but each one of them refused
8 take any action to stop what was going on, thereby authorizing, condoning and
9 acquiescing in it.

10 2.8 Subsequent to or contemporaneously with the notice described in
11 paragraph 2.7, above, Mr. Silva was transferred to the CRCC IMU twice, demoted
12 from minimum to close custody, transferred about seven (7) times between
13 different prisons, units and cells, deprived of his legal files, subjected to
14 falsified infractions and sanctions, searched repeatedly for no security-
15 related purpose, required to strip naked in front of other inmates and
16 subjected to various other adverse actions. The defendants, and each of them,
17 knew about and participated in the said adverse actions by perpetrating,
18 defending, upholding andr ignoring them. The events described in this
19 paragraph occurred between June, 2012 and February, 2013.

20 2.9 During the time periods relevant to this complaint, DOC and the AGO
21 had no policy, rule or regulation that prohibited their employees from
22 retaliating against prisoners for court access and other free speech
23 activities. Moreover, the said agencies failed to train their employees on
24 what constituted unlawful retaliation, what civil rights prisoners have and
25 how to avoid violating those rights. In fact, DOC had never found and the AGO
26 had never admitted that any of their respective employees had ever retaliated
27 against a prisoner in their respective histories. Rather, the AGO maintained
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1 a blanket practice of indemnifying any and every DOC employee who was ever
2 sued for allegedly violating any inmates' civil or legal rights, with the
3 possible exception of a few staff rape cases.

4 2.11 None of the harassment and retaliatory actions taken against Mr.
5 Silva furthered or were narrowly tailored to the furtherance of legitimate
6 penological interests; rather, they were pretextual and designed to dissuade
7 and punish him for pursuing First Amendment protected, free speech activities.

8 2.12 As a proximate result of the above adverse actions taken against Mr.
9 Silva by the defendants and their co-conspirators, he suffered the loss of
10 court cases, settled cases for pennies on the dollar (monetary loss), was
11 emotionally and mentally traumatized, and suffered other injuries and damages
12 to be proven at trial. Incorporated by reference as if fully set forth herein
13 is Washington State Department of Licensing Uniform Commercial Code Financing
14 Statement 2012-183-5782-9 (filed 7/1/12), which establishes the case names and
15 numbers of the specific court actions that suffered damages as a proximate
16 result of the defendants' and their co-conspirators' seizure, withholding and
17 ultimate theft of Mr. Silva's legal files. There were at least twenty-seven
18 (27) cases named in that agreement, with an agreed value of \$185,185.18 each,
19 for a total value of \$5,000,000. Those cases had to be settled for \$6,500
20 plus forgiveness of \$16,000 in debt (\$22,000.00), so Mr. Silva suffered
21 \$4,978,000.00 in damages as described above.

22 2.13 The defendants, and each of them, acted with callous or reckless
23 disregard for Mr. Silva's rights, or with evil motive, when they perpetrated
24 the acts and omissions complained of herein.

25 III. CAUSES OF ACTION

26 3.1 Paragraphs 1.1 through 2.13 are incorporated by reference as if fully
27 set forth herein. When the defendants subjected Mr. Silva to adverse actions
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1 because he engaged in protected court access and free speech activities, and
2 when their acts and omissions did not advance nor were narrowly tailored to
3 the advancement of legitimate penological interests, they violated his right
4 to freedom from retaliation for exercising his First Amendment rights.

5 Accordingly, Mr. Silva asserts this cause of action under 42 USC § 1983 for
6 the violation of his civil rights, and he hereby seeks special findings and
7 damages for each adverse act or omission taken against him by the defendants
8 and/or their co-conspirators, including but not limited to punitive damages.

9 3.2 Paragraphs 1.1 through 2.13 are incorporated by reference as if fully
10 set forth herein. In destroying Mr. Silva's property as described above, the
11 defendants or their co-conspirators destroyed his typewriter. Mr. Silva
12 hereby claims \$5,000.00 for the loss of use and enjoyment of his typewriter
13 due to negligence of the defendants or their co-conspirators.

14 3.3 Paragraphs 1.1 through 2.13 are incorporated by reference as if fully
15 set forth herein. When the defendants seized, withheld and ultimately stole
16 Mr. Silva's legal files, and when they affirmatively obstructed his access to
17 the courts on his meritorious legal actions that were pending in various
18 courts, they entered into an agreement, contract or covenant with him for the
19 loss of court actions that proximately resulted therefrom. That agreement,
20 contract or covenant was memorialized and undisputed as Washington State
21 Department of Licensing Uniform Commercial Code Financing Statement 2012-183-
22 5782-9 (filed 7/1/12), which lists the names and case numbers of the cases, as
23 well as their values. Mr. Silva hereby sues for enforcement of and/or
24 foreclosure on the debt resulting from the financing statement and related
25 instruments.
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1 3.4 Paragraphs 1.1 through 2.13 are incorporated by reference as if fully
2 set forth herein. When the defendants subjected Mr. Silva to pattern abuse
3 and psychological trauma as described above, they negligently and/or
4 intentionally inflicted emotional distress on him, resulting in damages.

5 3.5 Paragraphs 1.1 through 2.13 are incorporated by reference as if fully
6 set forth herein. When the defendants affirmatively and intentionally
7 obstructed Mr. Silva's court access on the undisputedly nonfrivolous cases
8 described above, they violated his right to access the courts without active
9 interference. Accordingly, Mr. Silva asserts this cause of action under 42
10 USC § 1983 for the violation of his civil rights, and he hereby seeks special
11 findings and damages for each case and/or cause of action that was damaged as
12 described above, including but not limited to punitive damages.

13 IV. REQUEST FOR RELIEF

14 4.1 Enter judgment against the defendants, and each of them jointly and
15 severally, for money damages in an amount to be proven at trial.

16 4.2 Enter an injunction requiring the defendants to create policies,
17 rules and regulations to protect Mr. Silva against retaliation and affirmative
18 court access obstruction, including but not limited to training of their
19 staff.

20 4.3 Grant Mr. Silva his costs and fees, including but not limited to
21 attorneys fees and statutory attorneys fees.

22 4.4 Grant any other relief the Court deems just, equitable or warranted.
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1 V. VERIFICATION

2 The undersigned declares under penalty of perjury that the foregoing is
3 true and correct.

4 RESPECTFULLY submitted this 8th day of May, 2016.

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8 MATTHEW G. SILVA, plaintiff
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